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October 30, 2002

By ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
TW-B204
Washington, DC 20554

Re: **Ex parte presentation**
WC Docket No. 02-314: Application of Qwest Communications International, Inc.
To Provide In-Region, InterLATA Services in the States of Colorado, Idaho,
Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming

Dear Ms. Dortch:

Randy Lowe and I of Davis Wright Tremaine LLP, on behalf of Touch America, Inc. ("Touch America"), met today with Christopher Libertelli, Legal Advisor of Chairman Powell, to discuss Touch America's comments in the above-referenced proceeding. Although under protest by Touch America, the following Qwest representatives were also present at the meeting and responded to the matters raised by Touch America: Hance Haney of Qwest and Peter Rohrbach of Hogan and Hartson.

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), and the Commission's Public Notice requesting comments in the above-referenced proceeding, DA 02-2438, issued September 30, 2002, attached please find a copy of the one-page summary of Touch America's opposition, which was distributed by Touch America during the meeting.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Davis Wright Tremaine LLP

/s/

Julie Kaminski Corsig

cc: J. Myles (via e-mail)
M. Carowitz (via e-mail)
G. Remondino (e-mail and hand delivery)
R. Harsh (via e-mail)
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WUTC Records (via e-mail)
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Y. Dori (via facsimile)

**QWEST'S MOST RECENT 271 APPLICATION MUST BE DENIED AS A SHAM
AND AS A MOCKERY OF THE FCC'S RULES AND THE '96 ACT**

- **QLDC is a sham designed solely to circumvent the requirements of Section 272.**
 - Qwest has failed to show that QLDC has either the assets or the employees to run a 9-state long distance operation or, perhaps more importantly, where and how it will obtain the necessary facilities and personnel.
- **The Commission must make its Section 272 determination on the entity that will actually be providing the long distance service.**
 - Qwest's Application makes clear that once Qwest puts its books in order, QCC will be the entity to provide long distance services.
- **The creation of QLDC does nothing to cure the fact that all of the Qwest companies – including QC – are not GAAP compliant and afflicted by corrupt policies and controls.**
 - All of Qwest's accounting policies, guidelines and controls, as well as the implementation of those policies, guidelines and controls, not just those subject to its restatement, are under review by Qwest, the SEC and the Criminal Division of the Justice Department and are endemic to all of Qwest's entities, including QLDC. (See Attachment A.)
 - It is impossible to ensure "a uniform audit trail" between QLDC and QC and therefore it is impossible to determine whether QC and QLDC are engaged in unlawful cross-subsidization or discrimination, both of which are at the heart of Section 272.
- **In addition to its other bad acts, Qwest has and continues to "knowingly and intentionally" violate the law and mislead regulators.**
 - As determined by an ALJ of the Minnesota Public Utilities Commission which was affirmed by the full Commission, Qwest has "knowingly and intentionally" violated Section 252 of the Act by failing to file certain "secret" agreements with the state commissions or make them available to other competitors.
 - Qwest wants us to believe its mere assertions that all relevant agreements have been filed. History shows Qwest has a narrow interpretation of its filing requirements and cannot otherwise be trusted. In any event, the absence of these agreements up to now has skewed the data which forms the basis of Qwest's current Application.
 - Qwest states that it is not its "business policy or practice" to address matters other than through written contracts. However, Qwest's recent testimony before Congress makes clear that Qwest does enter into oral agreements when necessary to mislead regulators in order to achieve a business purpose.
 - Contrary to Qwest's statements, it has admitted that it has provided and continues to provide in-region, interLATA services in violation of section 271. (See Attachment B.)
 - Qwest's attempt to refute allegations that it has intentionally misled regulators regarding its practice of performing MLT tests is contrived and only demonstrates what lengths Qwest will go to in order to cover up its misdeeds.

Qwest's Accounting Investigation Is Far Broader Than Its Restatement

Qwest claims that QLDC is not subject to the same accounting ills besetting its affiliates because "none of the policies and practices related to the accounting transactions currently under review by management and KPMG LLP for potential restatement have been applied by QLDC." (Supplemental Reply, WC Docket No. 02-314, p. 16.) However, as the sample of quotes below demonstrate, Qwest has admitted that its investigation of its accounting policies, guidelines, and controls, as well as their implementation, go beyond those "policies and practices related to" the restatement. Instead, they include all of Qwest's accounting.

July 28 Press Release:

The company, in consultation with KPMG, is now analyzing the application of the company's accounting policies to all of the company's optical capacity sales transactions. The company, in consultation with KPMG, is also analyzing the appropriateness of the accounting policies themselves.

* * * * *

The company said that these officers currently intend to explain in the sworn written statements, which they intend to submit to the SEC by August 14, 2002, that they will be unable to make the statement specified in the SEC order because of the expected restatement of the company's financial statements, the ongoing analyses by the company and KPMG of the accounting policies and practices of the company and the ongoing investigation by the SEC, among other reasons.

August 19 Press Release:

The company is continuing to analyze its accounting policies and practices in consultation with its new auditors, KPMG LLP. In addition, the company has underway a review of its internal controls. Qwest will attempt to conclude these analyses promptly.

August 8 Press Release:

The company is continuing to analyze its accounting policies and practices in consultation with its new auditors. In addition, the company has commenced a review of its internal controls. Qwest will attempt to conclude these analyses promptly.

October 28 Press Release:

As previously disclosed, the company remains under investigation, including with respect to some of the matters that are the subject of this announcement, by the United States Securities and Exchange Commission and the United States Department of Justice. Qwest continues to cooperate with these investigations, which have not concluded. [The subject of the announcement is "the completion of its analysis of accounting policies and practices as they relate to revenue recognition and accounting treatment for sales of optical capacity assets." Thus, the SEC and DoJ accounting investigations include more than the restatement.]

August 16 8K (the sworn statement of Qwest's "Principal Executive Officer," Richard C. Notebaert, and "Principal Financial Officer, Oren G. Shaffer, that they cannot certify Qwest's financials):

Qwest Communications International Inc. ("Qwest" or the "company") and its advisors are in the process of performing internal analyses of its accounting policies, practices and procedures, and internal controls. The results of this work are expected to affect certain of the company's prior financial information and disclosures, including information contained in covered reports.

* * * * *

Qwest determined not to re-engage Arthur Andersen LLP as its auditor and engaged KPMG LLP in May 2002. Since that time, KPMG has been analyzing the company's financial information and has provided input regarding its preliminary views on certain Qwest accounting policies, practices and procedures. Those views have been, and are continuing to be, considered as a part of the company's internal analysis . . . KPMG also is analyzing Qwest's internal controls, but has not completed this work. [In a separate section to the 8K, Qwest addresses as a separate matter accounting policies "for optical capacity asset sales transactions as indefeasible rights of use."]

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Qwest Communications International Inc. ("Qwest" or the "company") and its advisors are in the process of performing internal analyses of its accounting policies, practices and procedures, and internal controls.

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Earlier this year the company and its board of directors began an analysis of revenue recognition and accounting treatment for certain of the company's optical capacity asset sale transactions. That analysis since has been expanded, to include all of the company's optical

capacity asset sale transactions from 1999 to 2001, and to include other company accounting policies, practices and procedures and related disclosures.

* * * * *

Issues currently under consideration for potential restatement and/or enhanced disclosure in covered reports include, but are not limited to, the following: [IRUs, equipment sales, Qwest Dex, telecommunications services and “other accounting policies and practices, and of internal controls . . .”]

Qwest's Admission That Lit Capacity IRU Sales Are Services

Qwest continues the charade that its in-region, interLATA lit capacity services are not prohibited by section 271. Most recently, for instance, it claims that the “restatement of revenues received from optical capacity asset sales will not change the fact that these items are assets” and, as such, “do not implicate Section 271 [sic]” which prohibits services. (Supplemental Reply, WC Docket No. 02-314, n. 74.) Aside from the fact that the statement flies in the face of its public statements that due to its corrupt accounting policies it will need to restate its optical fiber asset sales as services, it most recently stated in its October 28 press release that:

Qwest Communications International Inc. (NYSE: Q) today announced that, in consultation with its auditor KPMG LLP ("KPMG"), it has completed its analysis and concluded that for accounting purposes it will treat sales of optical capacity assets (commonly known as "IRUs") for cash as operating leases.

Under FASB Statement of Financial Accounting Standards No. 13, an “operating lease” does not involve the transfer of an asset but is an agreement to use the asset over a stated period of time. In other words, it is not a sale but, over the life of the lease, is recorded as revenue by the lessor and as an expense by the lessee. Thus, in its July 28th Press Release and as set forth in its July 29th 8K filed before the SEC, Qwest stated that “[d]epending upon the ultimate determination of the appropriate accounting treatment, any decreases in these amounts in the periods in which they have been recorded would be partially offset by the amounts that would be recognized over the lives of the agreements if the optical capacity asset sales were instead treated as operating leases or services contracts.”